by one of the distinguished members of the Supreme Court,[4] and had it conferred upon that court the power to review the facts as well as the law. And why should it have been limited to criminal cases?

O. K. M.

Eminent Domain: Condemnation Proceedings: Awarding of Costs.—The Supreme Court of California in The San Joaquin & Kings River Canal and Irrigation Co. v. Stevinson[1] affirmed the rule laid down in California in the earlier cases of San Diego Land and Town Co v. Neale[2] and San Francisco v. Collins,[3] relative to the awarding of costs in condemnation proceedings under the right of eminent domain. There is a wide diversity of views among the various jurisdictions upon this question, due partly to the different statutes passed regulating the matter as well as to the different views which the courts have taken of the question apart from statute. Where statutes have been passed regulating the awarding of costs in condemnation proceedings their provisions have been very generally followed.[4] In the absence of statutes in Tennessee and Alabama it has been held that the general statutes governing the awarding of costs in ordinary civil actions was controlling[5] and in New Jersey costs are awarded in accordance with the rules of courts of equity.[6] On the other hand it has been held in a number of jurisdictions that the general statutes do not apply to condemnation proceedings and therefore in accordance with the general rule of the common law, each party must pay his own costs.[7] In California the question would seem to be governed by section 1255 of the Code of

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[4] Mr. Justice Sloss in his article on Reform of Criminal Procedure, 1 Journal American Institute of Criminal Law, 705, 709.

[1] (Decided May 31, 1913) 45 Cal. Dec. 594.

[2] (1891) 88 Cal. 50, 67, 25 Pac. 977.

[3] (1893) 98 Cal. 259, 33 Pac. 56.

[4] See Dickinson v. Amherst Water Co. (1885) 139 Mass. 210, 29 N. E. 657; McCoskey v. Fort Dodge, D. M. & S. Ry. Co. (1912) Iowa, 135 N. W. 6; Chicago, S. F. & C. Ry. Co. v. Elliott (1893) 117 Mo. 549, 24 S. W. 53; In re Brooklyn Elevated Ry. Co. (1903) 176 N. Y. 213, 68 N. E. 249; Detroit Southern R. Co. v. Commissioners of Lawrence Co. (1905) 71 Ohio St. 454 73 N. E. 510; In re Monongahela Water Co. (1909) 223 Pa. 323, 72 Atl. 625.

[5] Senaker v. Justices of Sullivan (1865) 36 Tenn. 115; Folmar v. Folmar (1881) 71 Ala. 136.

[6] Baltimore & N. Y. R. Co. v. Bouvier (1906) 70 N. J. Eq. 158, 62 Atl. 868.

[7] The Hampshire and Hampden Canal Co. v. Ashley (1834) 15 Pick. 496; New Milford Water Co. v. Watson (1902) 75 Conn. 237, 52 Atl. 947; In re Board of Rapid Transit Commissioners (1909) 197 N. Y. 81, 90 N. E. 456; Wisconsin Central R. Co. v. Kenale (1891) 79 Wis. 89, 48 N. W. 248.

Civil Procedure which provides: "Costs may be allowed or not, and if allowed may be apportioned between the parties on the same or adverse sides, in the discretion of the court." The cases above cited have held, however, that as the constitution provides that private property shall not be taken for public use without just compensation being first made,[8] the landowner cannot be required to pay either his adversary's or his own costs, for to do so would be to reduce by that amount the compensation awarded him at the trial, and so be an infringement of the constitutional guarantee. The tendency of the courts of other jurisdictions seems to be towards the adoption of this rule.[9] Its justice is apparent, for the owner, being entitled to just compensation for the property which is taken from him, is entitled to have the amount of that compensation determined when the parties cannot agree upon it. The expense to which he is put is, therefore, necessary and proper, and should be borne by the party who forced him to incur it.[10] The condemning party would seem to be amply protected from frivolous appeals. and costs improperly incurred by the power of the court to determine what are proper items of costs and to disallow such as are improper.[11]

B. B. B.

Evidence: Statements of Deceased Person Against Interest.—The United States Supreme Court, speaking through Mr. Justice Pitney, holds, in Donnelly v. United States,[1] that the trial court properly excluded statements of a deceased person despite the fact that the statements imposed upon the declarant a criminal liability for murder. That the hearsay exception as to deceased person's declarations against interest extends only to declarations against proprietary or pecuniary interest and not to declarations against personal interest in general was definitely settled in England by the House of Lords in 1844,[2] and the limitation set by that case has been adopted by most of the American authorities.[3] Despite the long line of American

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[8] Constitution of California, Art. I, section 14.

[9] Peoria B. & C. Traction Co. v. Vance (1911) 251 Ill. 263, 95 N. E. 1081; Dolores No. 2 Land and Canal Co. v. Hartman (1892) 17 Colo. 138, 29 Pac. 378; Petersburg School District v. Peterson (1905) 14 N. D. 344, 103 N. W. 756; Grays Harbor Boom Co. v. Lownsdale (1909) 54 Wash. 83; 104 Pac. 267; Stolze v. Milwaukee & L. W. R. Co. (1902) 113 Wis. 44, 88 N. W. 919.

[10] Lewis on Eminent Domain, 3rd Ed. sec. 812.

[11] San Francisco v. Collins, supra.

[1] 33 Supreme Court Reporter, 451, (Decided Apr. 7, 1913).

[2] Sussex Peerage Case, (1844) 11 Cl. & F. 109.

[3] A note on p. 460 of the Supreme Court Reporter cites forty-three cases, including People v. Hall, (1892) 94 Cal. 595, 599, 30 Pac 7. See also, Jones on Evidence, sec. 324, note 78.